



Commission for
Communications Regulation

Information Notice

ComReg makes Final Determination in dispute between BT and Eircom.

Information Notice

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Version: Final

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1. The Commission for Communications Regulation (**'ComReg'**), pursuant to Regulation 31 of the Framework Regulations¹, has reached a Final Determination in a dispute between BT Limited (**'BT'**) and Eircom Limited (**'Eircom'**). The scope of the dispute is as follows:
2. Whether Eircom is permitted to require BT to agree to the following conditions:
 - (a) "No ingress or egress point will be included for the purpose of serving the mast access site";
 - (b) "An Undertaking (e.g. MNO [Mobile Network Operator]) will not be connected";
 - (c) "Network-network interconnect connections will not be provided",prior to Eircom supplying Access to Civil Engineering Infrastructure (**'CEI'**) to BT at the Kilbarry Mast Site, Old Whitechurch Road, Cork.
3. ComReg's consideration of the dispute and the Determination is set out in ComReg Decision D03/22 (Document Number 22/43). It is ComReg's view that:
 - (a) BT has requested access to Eircom CEI for the Requested Route for the purpose of providing an Electronic Communications Service (**'ECS'**) to an MNO. The Eircom CEI required for the Requested Route² includes Duct, Sub-duct, Chambers, Ingress and Egress. The underground pipes or conduits for the Requested Route come within the definition of Duct contained in Section 2.1 of the of the WLA Decision Instrument³.
 - (b) Under Section 7 of the WLA Decision Instrument, Eircom is obliged to offer and grant access to this CEI regardless of whether Access is sought for purpose of providing services to End-Users; Access provided under Section 7 of the WLA Decision Instrument may be used to provide an ECS to Undertakings, including MNOs.
 - (c) The current version of the Access Reference Offer (**'ARO'**) sets out the conditions for Access under Eircom's obligations at Section 7.2(xiii) of the WLA Decision Instrument. Eircom may not impose further conditions, that would prevent such Access from being used to provide services, such as a leased line, to an MNO.
 - (d) There are no technical or other reasons why Eircom cannot provide the Access requested by BT in respect of the Requested Route.

¹ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

² Defined in ComReg Decision D03/22.

³ Decision Instrument at Appendix 20 of ComReg Decision D10/18 - ComReg Document No. 18/94, entitled "Market Review - Wholesale Local Access (WLA) provided at a Fixed Location & Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products: Response to Consultation and Decision", dated 19 November 2018.

4. ComReg therefore reaches the following Determination:
 - (a) Eircom's obligation to provide Access to CEI is not limited by the purpose to which Access is sought and Eircom may not subject Access to the conditions set out in Section 3.1 of the Determination notice located at Appendix 1 of the Determination.
 - (b) In the absence of any valid reasons why Access is not capable of being delivered at the Requested Route, Eircom shall meet BT's Order is without any further delay in accordance with applicable terms and conditions as set in Eircom's Access Reference Offer.
 - (c) BT may use Access on the Requested Route for the purpose of providing any ECS or ECN as it sees fit.
5. This Determination updates a draft Determination⁴ which was published on 14 April 2022 and follows analysis and consideration of comments received subsequent to the draft Determination.

⁴ Draft Determination of a dispute between BT and Eircom concerning CEI Access, ComReg Document Number 22/26